

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 03-0372
Indiana Corporate Income Tax
For 1999 and 2000

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ISSUE

I. Interest Assessment – Corporate Income Tax.

Authority: IC 6-3-4-4.1(d); IC 6-8.1-10-1; IC 6-8.1-10-1(a); IC 6-8.1-10-1(b); IC 6-8.1-10-1(b)(3); Income Tax Information Bulletin #64 (January 2003).

Taxpayer argues that interest charges – levied against unpaid 1999 and 2000 corporate income taxes – should be abated in their entirety.

STATEMENT OF FACTS

Taxpayer is an out-of-state company doing business within Indiana. During 2001 and 2002, the Department of Revenue (Department) conducted an audit review of taxpayer's business records and previous tax returns.

Following the review, the Department concluded that taxpayer owed approximately \$5,000 in additional corporate income taxes for 1999 and 2000. In 2003, the Department sent taxpayer a bill for the unpaid tax. In addition to the amount of unpaid tax, the Department also included interest charges of approximately \$1,000.

Taxpayer agreed with the Department's conclusion that it owed the additional \$5,000 in tax. However, it concluded that the \$1,000 in interest charges was ill-advised and that the interest charges should be abated. Therefore, the taxpayer submitted a protest. An administrative hearing was conducted during which taxpayer explained the basis for its protest. This Letter of Findings results.

DISCUSSION

I. Interest Assessment – Corporate Income Tax.

Taxpayer's argument goes back to the time it reported its 1998 income. Taxpayer filed a corporate income tax return in early 1999. In that return, taxpayer indicated that it had overpaid its 1998 taxes by \$6,000. However, rather than asking for a \$6,000 refund, it directed the Department to carry forward the \$6,000 to cover any unexpected 1999 liability.

Taxpayer filed a tax return in early 2000. Taxpayer did not owe any income tax for 1999. Again, taxpayer asked that the same \$6,000 be carried forward to cover any unexpected 2000 liability.

In November of 2000, taxpayer filed a “short period” return. Again, taxpayer did not owe any additional taxes. However, taxpayer failed to indicate that the \$6,000 should be carried forward. Instead taxpayer asked for a refund. The Department obligingly issued a refund check. Taxpayer decided that it did not want the \$6,000 check; taxpayer wanted the \$6,000 carried forward, and it returned the uncashed check asking that the amount be applied toward any potential 2001 liability.

When taxpayer submitted its 2001 return, it determined that it did not owe any additional taxes. It asked that the \$6,000 be carried forward again to cover any unexpected 2002 liability.

For reasons not related to the stray \$6,000, the Department decided it was time that taxpayer’s business records and past tax returns should be audited. That audit was conducted during 2001 and 2002. The “Audit Summary” was completed in May 2003. The audit report’s bottom-line conclusion was that taxpayer had erroneously underreported its 1999 and 2000 income and that it owed additional taxes. Therefore, the Department sent taxpayer notices of “Proposed Assessment” stating that taxpayer owed approximately \$5,000 in taxes together with \$1,000 in accrued interest.

Taxpayer does not challenge the \$5,000 tax assessment. What it does challenge is the \$1,000 interest charge. Taxpayer’s argument is based on the fact that it had carried over the \$6,000 overpayment from year-to-year-to-year. In effect, taxpayer argues that – in taxpayer’s words – the \$6,000 was in its “account” at all relevant times. Taxpayer believes that the \$6,000 was available at all times to offset any unexpected liability including the tax liability for its underreported 1999 and 2000 income.

IC 6-8.1-10-1 imposes an interest charge when a taxpayer has not paid the proper amount of taxes due.

IC 6-8.1-10-1(a) provides that, “If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or *incurs a deficiency upon a determination by the department*, the person is subject to interest on the nonpayment.” (*Emphasis added*).

The statute also establishes the amount against which interest is calculated. IC 6-8.1-10-1(b) states that, “The interest for a failure described in subsection (a) is the adjusted rate established by the commissioner under subsection (c), from the due date for payment. The interest applies to: (1) the full amount of the unpaid tax due if the person failed to file the return; (2) the amount of the tax that is not paid, if the person filed the return but failed to pay the full amount of tax shown on the return; or (3) the amount of the deficiency.”

Income Tax Information Bulletin #64 (January 2003) reflects the Department’s interpretation of IC 6-8.1-10-1. “If a taxpayer fails to file a return, fails to pay the full amount of tax, or files a late return with tax due, the taxpayer is subject to interest (and possible penalty) on any outstanding

balance of tax due after the due date of the return under IC 6-8.1-10-1. The interest on nonpayment of tax accrues at the rate established by the Commissioner from the due date until the date on which full payment of the tax is received.”

It is not disputed that taxpayer owed additional corporate income tax for 1999 and 2000. Therefore, it would seem apparent that the amount of unpaid tax is subject to an interest charge pursuant to IC 6-8.1-10-1(b)(3) which states that an interest charge is imposed on “the amount of the deficiency.” Similarly, Income Tax Information Bulletin #64 restates the statutory imperative; interest is charged “on any outstanding balance of tax due after the due date of the return” That interest charge “accrues . . . from the due date until the date on which full payment of the tax is received.”

The statutory language reads in the imperative and does not vest in the Department any discretion regarding whether or not to impose the interest charge. “If a person . . . incurs a deficiency upon a determination by the department, the person *is* subject to interest on the nonpayment.” IC 6-8.1-10-1(a) (*Emphasis added*).

Nevertheless, taxpayer maintains that because it previously had overpaid its taxes by \$6,000 and repeatedly directed that the full amount be carried forward, the interest charge on the 1999 and 2000 assessment should be abated. Taxpayer’s argument is that it deposited into its account a discretionary, free-floating asset which could be shuttled back-and-forth in order to instantly meet whatever tax liability – past, present, or future – might arise. In effect, taxpayer argues that the \$6,000 should have been shuttled backwards to cover the 1999 – 2000 assessment the moment that particular liability arose. However, taxpayer misapprehends the status of the \$6,000 overpayment once taxpayer directed that the amount be carried forward. At the time taxpayer filed its 2001 tax return, taxpayer had two choices; it could request that the \$6,000 be returned or it could request that the amount be carried forward to pay its 2002 tax liability. During the time taxpayer considered its options, taxpayer had discretionary control over the \$6,000. However, once taxpayer directed the Department to carry forward the \$6,000, taxpayer lost control over and possessory interest in the money.

Once the amount was carried-forward, the \$6,000 was no longer taxpayer’s asset. Instead, the carryforward was a “locked-in” payment of 2002 corporate income tax liability. IC 6-3-4-4.1(d) provides, “Every corporation subject to the adjusted gross income tax liability . . . shall be required to report and pay an estimated tax equal to twenty-five (25%) of such corporation’s estimated adjusted gross income tax liability for the taxable year” In other words, while taxpayer had the momentary discretion to obtain a refund check or carry forward the amount, it nonetheless had to pay *something* (25%) on its estimated 2000 tax liability. Once taxpayer carried forward the \$6,000, that amount was *gone*. The \$6,000 was not on deposit in taxpayer’s “account.” The \$6,000 was a fixed payment of 2002 taxes.

In addition, IC 6-8.1-10-1 provides no leeway whatsoever on the question of whether or not to impose interest against a tax deficiency or on the question of when that interest begins to accrue. Under IC 6-8.1-10-1(b), the interest clock started ticking on the day that the 1999 and 2000 taxes first became due. The 1999 and 2000 taxes became due on the date that taxpayer first reported its 1999 and 2000 income. The fact that taxpayer had directed the \$6,000 overpayment be carried

forward in order to pay for future tax liability did nothing to change the fact that its 1999 and 2000 tax liability was originally underreported. Taxpayer seems to liken the Department to a quasi-financial institution; taxpayer deposited \$6,000 into its “account,” the \$6,000 was available to offset any unexpected charge against taxpayer, and the Department had enjoyed the “use” of the \$6,000 until 2003 when the notices of proposed assessment were first issued. The Department must decline the opportunity to cast itself into such a role. In addition, it must be fairly pointed out that taxpayer had the “use” of the \$5,000 in unpaid taxes since 1999 and 2000.

Taxpayer underreported its 1999 and 2000 tax liability. Interest statutorily accrued on that particular liability from the moment that the 1999 and 2000 taxes first became due until the liability was ultimately satisfied in 2003. The fact that taxpayer carried forward an overpayment of earlier taxes as a payment on its estimated 2002 liability is an irrelevancy. The \$6,000 carryforward did nothing to stop interest from accruing on the 1999 and 2000 tax liability.

FINDING

Taxpayer’s protest is respectfully denied.